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Evaluation of the Judicial Reform Project,

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EXECUTIVE SUMMARY

A. Background

Among the major factors in El Salvador's political problems is lack of confidence in the system of justice. Human rights abuses, including political assassination, have gone unpunished, partly from insufficient investigative competence, but also because of corruption of the system through bribery and intimidation. The situation reached a crisis for the Government of El Salvador ("GOES") in the early 1980's when escalating violence extended to foreigners, including four American nuns and two land reform advisors. With vital U.S. assistance jeopardized by American dismay at GOES failure to punish flagrant human rights abuse, the GOES and the U.S. Government ("USG") developed a four pronged program to improve administration of justice. Components included (1) protection of judges, witnesses and other trial participants in vulnerable positions, (2) strengthening GOES capacity to investigate important cases, (3) support for study and reform of criminal law and procedure, and (4) improvement of the courts themselves through training of judges and staffs, procurement of needed equipment and construction and refurbishing of facilities.

B. Special Investigation Unit ("SIU") and Forensic Unit ("FU")¹.

To strengthen criminal investigation capability, a special investigation unit and supporting forensic laboratory have been established. These units have been staffed with selected personnel, trained in current techniques, operating under the direction of an independent inter-ministerial Commission for Investigation of Criminal Acts ("Investigations Commission"). The Commission includes representatives of the Ministry of Justice, the Ministry of Interior and the Presidency. The SIU is to apply professional investigative capability under impartial leadership. It is supported by a forensic unit which will acquire and apply the latest technology and equipment for use of material evidence, as distinct from testimonial evidence, in investigation and trial of criminal cases.

Although the Commission provides civilian direction to the investigative units, the effect is significantly reduced by the

¹ For purposes of this discussion, in referring to the SIU and FU, we also include the Executive Unit of the Investigations Commission that directs them.

use of military officers to direct the units. Further, even for staff, the necessary skills and experience were only to be found in existing military-directed police forces. Also, although the project agreement provides otherwise, the SIU and FU under the "temporary" Investigations Commission do not of themselves have status as "auxiliaries of the court" to present evidence at trials. This important function still depends on the personal status of staff as members of public security forces.

The SIU and FU, are off to a good start, under difficult circumstances. For those who hoped the SIU and FU would quickly solve the more notorious human rights cases, they have been a disappointment. With AID financed technical support they are acquiring the capacity to investigate such cases more effectively in the future, and have already done some good work on recent cases. Unfortunately, however, the evidence in many of the more notorious cases was stale by the time the SIU and FU had reached them. To help improve efficiency of the investigative units, AID should accelerate procurement of much needed communication and transportation equipment.

To enhance performance and credibility of the investigative units in the future, we recommend their insulation from the military, along with any necessary changes in law to effect that result. We suggest that over the short term at least, pending "civilianization" of the investigative units, they continue under the direction of the Investigations Commission. Since the judges in the judicial system are primarily responsible for supervision of criminal investigations, we suggest addition of the Supreme Court President to the Commission.

The Forensic Laboratory should be moved. It needs more space and its utility would be enhanced by removing it from the military compound and placing it closer to SIU headquarters. Eventually it should be attached to the organization most responsible for criminal investigation, provided that its services are kept fully and freely available to the SIU function. If the Forensic Laboratory is to be well used there must be extensive training of police, judges, and defense and prosecution lawyers in use of the type of evidence obtained through a forensic laboratory.

C. Judicial Protection Unit ("JPU")

To preserve the integrity of the judicial process there is need to protect vulnerable participants in specific cases. El Salvador has a notable history of corruption of the judicial system, especially intimidation by violence (including murder) against judges, witnesses and other participants.

The issue thus relates more to feasibility than to need. For financial resources and training of human resources we can look

over the short term to assistance from the United States. Over the longer term, however, we must be concerned with whether and how an effective protection system can be sustained within El Salvador's limited financial resources, and if so, the type and extent of protection which could be so afforded.

As to experience, we find that the training and deployment of sixty prison guards at the trial of the Nuns' case served its purpose to the extent that those proceedings were not disrupted. There was little consideration for the longer term, however, either in the conception of an institution or the selection of personnel.

We endorse the concept of a small Judicial Protection Unit whose primary functions would be threat assessment and arranging protection of specific participants in specific cases. It could have some limited organic capacity for meeting an urgent and immediate protection requirement pending access to other services. In facing a variable demand, however, it should draw for the most part on other security forces or private contractors. The organic staff would provide training and supervision for the guard personnel drawn from other sources.

The JPU, for the same reasons as the SIU, should be staffed by civilian career personnel who are well qualified and accordingly well compensated. Over the short term the JPU should be placed under the Investigations Commission. Such placement would minimize proliferation of agencies while protecting the JPU, through the Commission, from parochial requirements of any one individual or agency. The purposes and functions of the investigative units (SIU and FU) and the JPU are closely related. They share a primary concern for assuring fairness in administration of criminal justice. Working with the SIU, JPU risk assessment could more readily tap SIU resources for necessary intelligence and investigative capability. As the technical services of the investigative units are increasingly in demand by the other public security organizations, the investigative units' linkages and the leverage to facilitate necessary cooperation should increase.

Over the longer term, after the investigative units and JPU are well established and the Supreme Court has built up its administrative capacity, the SIU and JPU might appropriately be attached to the Supreme Court as a special judicial police force.

D. Legislation Revisory Commission

Since its establishment in September 1985, the Legislation Revisory Commission has gained institutional respect and credibility. This has been earned by the high quality of Commission members and staff, and of professionals contracted to

carry out studies. Quality results have been gained through due attention to appropriate levels of compensation.

Highest priority is given to criminal law reforms, but some attention to civil law has been justified to enhance capacity of the system to ease tensions that cause crime.

The Commission has yet to make its mark with many enacted laws. Indeed, only one legislative proposal (concerning small farmers) has been enacted thus far. Another major project concerning legal rights during state of seige has earned praise and is presently under consideration by the Assembly.

The Commission has been criticized for not doing more in presenting its proposals to the Assembly. It is praised, however, for the broad participation sought through hearings and seminars on proposed laws. Thus it has gained feedback and support from interested groups and the public in general. The Commission has properly emphasized human rights in its subjects for study.

The value of the Commission's function has been sufficiently recognized that support is growing for making it permanent. While the GOES alone could not finance the Commission's work on the present scale, Salvadoran lawyers might contribute their services and some financial support along the lines of similar organizations in other countries.

We make the following recommendations:

1. Since the real measure of the Commission's accomplishment will be laws enacted, as distinct from laws proposed, the Commission should take a more active role in presentation of bills to the Assembly.
2. The Commission should give more emphasis to the application of laws in such areas as criminal procedure, criminal investigation, judicial police, etc.
3. The Commission should give priority to studies for reformation of the JPU and qualification of the SIU and FU to present evidence.
4. The Project should support the Commission's efforts to establish and maintain a specialized library.
5. The Project should be extended through December 1990 to permit completion of needed work.
6. AID should encourage and support transition of the Commission to a permanent and self sustaining law revisory institute.

E. Court Administration

The Judicial Administration and Training Component of the project has been slow starting because of the need for certain

preliminary studies. A major assessment of the Judicial Administration Sector was just recently completed.

Training programs for judges and other court personnel are already under way, some conducted with the help and collaboration of regional organizations, particularly ILANUD. Plans are already underway for improving and expanding the administrative structure of the judiciary to improve efficiency and effectiveness of the courts by relieving judges of administrative functions. Among such administrative improvements will be the incorporation of computer technology for essential data gathering and use in planning and evaluation functions.

From our examination of the system at work, we are favorably impressed, particularly in the area of civil law, by the evidence of able people willing to work under difficult conditions. More needs to be done to enhance the status of the courts and the attractiveness of the judicial career to obtain a higher quality applicant pool. Other measures to improve the quality of the judiciary include merit selection, an improved evaluation and disciplinary system, and an effective code of judicial ethics. More training should be made available through continuing professional education programs for self improvement of the judiciary and their staffs. More work is needed in defining roles and functions of the judiciary and supporting staff, including the police, in the handling of criminal cases.

For AID we suggest the importance of determining division of labor with other donors, particularly civil law countries in a better position to help the Salvadoran legal system with the substance of legal and systemic reform. Secondly, the AID Mission needs to pursue further the utility of regional programs to supplement the current bilateral project in addressing the specific needs of Salvadoran judicial reform.

F. Project Management

Project design was good, considering the limited time available. Design of the Judicial Protection Unit was rushed to satisfy the needs of a specific situation and really met only that short term need. Further, rushing the overall project design led to some skimping in procurement planning, which lack was not remedied by prompt follow up during implementation.

Overall, project implementation has been good, particularly in view of the obstacles which had to be surmounted. The usual difficulties of building new institutions and systems have been compounded by a state of civil war and interparty political antagonisms among GOES implementing agencies. In overcoming such difficulties the Project Manager has done exceptional "outside"

work, building excellent working relationships in the GOES. Thus he has attracted Embassy informational and communication assignments, and become heavily overloaded. Consequently, internal communication and coordination have been slighted; while project implementation paper work usually gets done, often it is late and occasionally inadequate. Such problems have delayed project implementation at times. Also, communications problems and last minute submission of requests have adversely affected some working relationships within AID and with at least one GOES agency.

In the AID Mission, there is definite need for stronger back up and supervision on this project. Both within the AID Mission and between the AID Mission and the Embassy, there should be closer communication and coordination on this project of exceptional common interest for State and AID. The State Department and the Embassy have legitimately keen interest in this project, both because of its importance in the El Salvador political situation and because of the sensitivity of judicial and police functions in the Government.

I. BACKGROUND:

It is not the function of this evaluation to explore in depth the historical background of the country's present civil war. However it is relevant to note that among the principal causes for alienation of a substantial portion of the population is lack of confidence in El Salvador's system for administration of justice. The courts, staffed predominantly by part-time judges, work in largely inadequate and poorly equipped and maintained facilities, and are held in low regard. Judges and witnesses alike are vulnerable to attempts to corrupt the system through bribery or intimidation. The courts are often looked upon as tools of the powerful in the suppression of the weak. The interplay between the courts, the corrupters and the victims becomes a vicious downward spiral. Those concerned for security of their country turn to weapons rather than the courts to restrain people believed to be subversive. And when the innocent along with the guilty are killed with impunity by vigilantes, those aggrieved by such injustice turn to guns and guerrillas to gain personal vengeance or pursue their aspirations for a more just system.

Extremists on both sides have given up on the institutions and processes of democracy to pursue or protect their interests. They have turned to assassination as a means to exert political influence. A major factor fostering such breakdown of the political system has been inability of the judicial/police system to act as an effective restraint.

In El Salvador, not only were judges vulnerable to bribery and intimidation, also the police did not perform well in their roles as court auxiliaries for investigation of alleged crimes. The police were neither well skilled nor well equipped; but also, because the police were a part of the military organization and their principal officers came directly from the military, they were not in a good position to deal with crimes committed by the military.

El Salvador has witnessed a vicious downward spiral in administration of justice. As the strength of such extremist intimidation grew, the justice system became more vulnerable to intimidation, which in turn facilitated its growth. This deteriorating situation came to a head in the early 1980's as the death squads extended their activities to foreigners. U.S. government support for the Salvadoran regime was already coming into question because of the Salvadoran military's abuse of civilians in its campaigns against the guerrillas. Opposition to aid for El Salvador was further roused when four American nuns and two American land reform advisors among others fell victims to assassination. The seeming GOES inability to bring the perpetrators to justice severely impaired GOES credibility in the United States and elsewhere. The worsening image of the GOES

began to affect the disposition of the U.S. Congress to authorize further assistance, assistance upon which the GOES was heavily dependent for its survival.

At the same time there was renewal of American interest in improvement of legal systems, particularly administration of justice, as a means of strengthening new democracies and improving the image of their governments. Accordingly the GOES and State/AID collaborated in the preparation of a program to improve administration of justice in El Salvador. The program included a short term focus on protection of the court trying the Nuns case, and strengthening capability of the Salvadoran judicial/police system to bring to justice the murderers of the American land reform advisors, among others.

The objectives of the program went well beyond these short term interests, however. The program included measures to protect the courts, witnesses and judges against physical intimidation in the future, and overall improvement of the criminal investigation capability of the Salvadoran police to deal with other cases. Attention focussed on legal reform when it became apparent that certain Salvadoran rules of proof posed significant obstacles to the use of important evidence in criminal cases. The program included support for a commission of leading lawyers and jurists to review Salvadoran law, to suggest reforms for improving the system of administration of justice. Such reforms were to extend well beyond correction of a few rules of evidence. To build the competence and stature of the judiciary, the program included training of judges, procurement of necessary equipment and construction and refurbishing of physical facilities.

While this program enjoyed widespread support in the American Congress and Executive Branch as well as in El Salvador, there were difficult obstacles to overcome in implementation of the project. The legislature elected in 1983 was dominated by the conservative ARENA party. Under the Salvadoran system of government, the judges of the Supreme Court are elected by the legislature, and the Supreme Court judges in turn select the lower court judges. Following the election of President Duarte in 1984, the leadership of the judicial system and most of its judges were from a different party than the Christian Democrat controlled Executive Branch. Also, since the Revisory Commission was constituted largely of representatives of the judiciary, the Revisory Commission as well as the judiciary did not enjoy the closest of working relationships with the Executive branch. Considerable time and effort was required to break down the barriers of mutual distrust in establishing the working relationships necessary to promote the proposed legal reforms.

II. SPECIAL INVESTIGATION UNIT AND FORENSIC UNIT

A. Background

At present there are three main police forces operating in El Salvador. They are (1) the Policia Nacional which is the oldest of the police forces, having jurisdiction in the urban areas; (2) the Guardia Nacional, having jurisdiction in the rural areas; and (3) the Policia de Hacienda, which is part of the Customs and Treasury arms of the GOES. In addition to those main police forces are the Policia Municipal which has jurisdiction over minor offenses and traffic enforcement within the capital city.

The size of these police forces is estimated as follows:

- . Policia Nacional: 8,000-10,000 officers and enlisted personnel
- . Guardia Nacional: 5,000 officers and enlisted personnel
- . Policia de Hacienda: 2,000 officers and enlisted personnel

These approximately 16,000 police operate out of 129 locations throughout the country.

Under the Salvadoran constitution, the armed forces are responsible for public security as well as national defense. Accordingly, the three main police forces are branches of the military establishment with the officers and men responding to military authority and dependent upon the military in career advancement, retirement benefits, etc.

The dual role of being both military and police can hamper performance in both roles. Consequent to the civil war and attendant political unrest, killings and other violence have occurred away from the battlefield that are attributable to the state of civil war. There were the infamous assassination of Bishop Romero, the Sheraton murders, Las Hojas, la Zona Rosa and many other cases of less notoriety that caused increased tensions and concerns among the GOES and its people as well as international concerns. Preliminary investigation of some of these acts of violence pointed to persons associated with the military as well as political extremists and others involved with guerrilla terrorist groups. The police forces of the country found themselves ill trained and ill equipped to conduct the thorough professional investigations required, and are alleged to have lacked the professional ethics and integrity to pursue an investigation if the military, particularly higher ranking military, were found to be involved.

Another major deficiency in the police was the lack of a forensic criminalistics laboratory with staff expertise and modern equipment to support a criminal investigation. As pointed out by

judges and lawyers interviewed, the only evidence usually made available to a court of law was the introduction of a confession by the accused, often of dubious validity because of likelihood of coercion, or by eyewitness testimony which under the conditions existing was virtually non-existent.

Also lacking was understanding or comprehension of the value of such evidence on the part of prosecutors, defense lawyers and judges. They neither understood nor cared for this type of evidence and gave it little or no value in the trial process. For example, in the Sheraton case several bullets were dutifully recovered by the police at the crime scene. They were compared with suspect weapons by the National Police laboratory and always returned to the judge after such examination. Now that the case is coming to trial they have been "misplaced" by one of the series of judges responsible for this case.

This series of events led to formation of the Investigations Commission. The Commission's purpose was to improve the level of police capabilities as well as to bolster the confidence of the people in the police to be able to carry out with impartiality its mission to protect life and property and apprehend the violators of the law.

The Investigations Commission was officially formed in July of 1985 under GOES Legislative Decree No. 58. Shortly thereafter, President Duarte appointed a Commission composed of three civilians: the Minister of Justice, Dr. Julio A. Samayoa, who presides over the Commission; Ing. Jose R. Perdomo, representative of the President, now Minister of Economy, and Vice Minister of the Interior Lic. Carmen Amaya Pantoja de Morales. The Secretary to the Commission is Lic. Carcano Quintana.

The Commission is empowered to order investigation of crimes that would greatly affect the social well being of the public and nation, as well as human rights violations. The Executive Unit of the Commission is commanded by two military officers holding the rank of Col. and Lt. Col. who report directly to the Commission. Under the Executive Unit are the Investigative Unit and Forensic Unit, each commanded by a Lieutenant.

B. Special Investigations Unit

This special elite group of investigators first became operational in July of 1985 with an original complement of five personnel. Its present complement now numbers 27 investigators plus an administrative support staff.

This unit was formed to investigate cases that other police forces were considered incapable of handling for various reasons,

i.e., lack of qualified trained investigators, lack of qualified crime lab personnel and equipment, military involvement of perpetrators, etc. The selection of cases for the unit is within the Commission's discretion and can include any criminal matter they deem of sufficient importance. Personnel for this unit were selected from the ranks of other police forces with special attention to the areas of integrity, professional conduct, education and a dedication to the goals and objectives of the Commission.

In our meetings with various members of the SIU, we were impressed with the professional conduct, desire and ability to conduct these sensitive type of investigations under the pressures working against them.

The Investigations Commission report of September 30, 1987 to the Human Rights Commission of El Salvador included the following data:

- 67 cases have been assigned to SIU from July/85 to Sept./87
- 15 cases are under active investigation (Romero case included)
- 4 cases on inactive status pending new leads
 - (1) murder of daughter of Mayor of Quezaltepeque
 - (2) disappearance of journalist John J. Sullivan
 - (3) Sheraton case multiple homicide
 - (4) disappearance of Abel Dubon Castro
- 17 cases concluded (Zona Rosa case and kidnapping of President Duarte's daughter)
- 12 cases involving 24 suspects pending court dispositions.

By U.S. standards this is not a heavy caseload. Many of the cases are especially difficult; that is why they were assigned to the SIU. Further, the SIU is a new organization working out its institutional growing pains and working with new techniques at the same time. Also, minor cases cannot be permitted to distract the SIU from the more important cases that it was specially established to deal with. We concur, however, in the observation of the SIU technical advisor that, within its capacity, the SIU needs to be assigned more "live" cases. Only by working a sufficient number of current cases can the SIU build up the necessary experience and expertise, confidence and prestige, to attain its objective of becoming a first class investigative unit.

C. Forensic Unit

For collection and analysis of physical evidence in various types of cases, the Forensic Unit has developed capacity to support not only the SIU but also other police units and courts.

Services already provided by the FU as of September, 1987 included 200 questioned document examinations; 30 polygraph examinations; 200 artistic sketches; 94 crime scene sketches; 20 latent print examinations; 1 forensic medicine examination; and 3 hair fiber analyses.

We note that the officer assigned on an interim basis to the Forensic Unit seems to show more interest in investigation generally than in the work of the Forensic Unit. The leadership of that laboratory section has suffered accordingly.

D. Training

Over 1,000 hours of specialized training courses have been received by the SIU and FU. In addition to receiving training, these units have conducted training courses for other police groups and judges to give them knowledge in advanced techniques of criminal investigation. The justice system depends on proper investigation and reporting on the part of the police, proper analysis of evidence on the part of the laboratory, proper utilization and appreciation of the physical evidence on the part of the courts and lawyers and adequate respect and belief and support on the part of the public. These courses are a small step forward in bringing all of the various components up to the same level.

E. The Amnesty Factor

In judging performance of the SIU over recent months, we must note the amnesty factor. The amnesty as formulated extended to all "political" crimes through late October, 1987, except the Romero assassination, leaving it to the courts to determine on a case by case basis what were "political" as distinct from "common" crimes.

In view of the amnesty, it is entirely understandable that the investigation units would not give highest priority to tracking down perpetrators of likely "political" crimes only to see them freed under the amnesty. Particularly would this be so for a case in which military colleagues of SIU leadership were suspects. Assuming the SIU leadership had the integrity to risk military disfavor, they should hardly have been expected to do so pointlessly. During our stay in El Salvador the SIU quite logically was directing most of its resources at the two most

important cases not covered by the amnesty - the Romero and Anaya cases.

F. An Elite Investigative Agency

We recommend that over the short to medium term, SIU/FU be a single center of "high tech investigation." Although set up initially for investigation of certain notorious cases of particular public concern both within El Salvador and elsewhere, the SIU and FU will gain capability beyond those cases. To the extent that they can provide services of use to other security forces, a "quid pro quo" relationship is gained which should help facilitate cooperative relationships with those agencies. Further, to the extent that the SIU and FU are successful as civilian public security agencies, they should help to establish a good model for further "civilianization" of police functions in the future. For further discussion of potential separation of the FU from the SIU over the longer term, see Section VII C below.

We were impressed by the degree of consensus among Salvadorans on the need for professional investigation and forensic capabilities under civilian control. We understand that this attitude, particularly among the public security forces, represents a distinct turnaround over the last several years. Previously there was substantially less understanding of the impact of harsh repression and corruption of the judicial system, through intimidation and otherwise, in weakening the political base of the Government in its struggle for survival. We understand, however, that there are still significant elements within the military and the more militant political fringes who do not favor the function of the Special Investigation Unit.

G. The Issue of Military Involvement

Substantially affecting the image of the SIU and FU in the eyes of many is the fact that they are staffed by military personnel, the police being a part of the military in El Salvador. Moreover, the officers of the SIU and FU are not even assigned permanently to police duty. Senior police officers are assigned back and forth between the army and the police. This presents a seeming contradiction in that a principal reason for establishing the SIU was lack of confidence in the capacity or willingness of the military-dominated police forces to investigate cases in which military complicity was suspected.

However, a substantial degree of civilian direction is provided through the Investigations Commission in overseeing the work of the SIU and FU. The Commission includes three civilian members of the Duarte government: the Minister of Justice, who chairs

the Commission, the Vice Minister of Interior, and the personal representative of the President, currently the Minister of Economy. Further, the civilian government had significant influence in selection of the officer personnel leading the SIU and FU. They were selected for their perceived integrity and their willingness to pursue the investigations wherever they might lead.

There was a respectable rationale for staffing the SIU and FU with personnel from the public security forces during start up, particularly if quick results were wanted. Since police functions until now have been performed only by the public security forces, there are few if any qualified and experienced personnel outside the military forces. Further, under Salvadoran law, evidence in judicial proceedings is admissible only from auxiliary organs of the court. The public security forces and their personnel already so qualify; the SIU and FU under the Investigations Commission do not yet.

We are told that such legal impediment is hardly insuperable. We understand that the current situation is a matter of political will, and of power balance between the civilian government and the military. We are informed that the civilian government is now prepared to insist on amendment of the laws to qualify the SIU and FU and their staff as auxiliary organs of the court to present evidence at judicial proceedings. Indeed this was required by the original judicial reform project agreement. Continued noncompliance impairs AID's credibility as well as that of the GOES.

As to the effect of the military involvement upon the performance of the SIU and FU, we hear conflicting views whether the current leadership of the SIU has been constrained in pursuing investigations where they might lead. The record thus far has not been good for solving cases in which senior military are suspected of complicity. Nor will independent action of military assigned to police be encouraged by the fate of reform-minded Col. Lopez Nuila. He has been reassigned and passed over for promotion, apparently through displeasure of some influential military colleagues.

From an operational perspective, the military officers provide strong leadership and good discipline. Up until recently at least, they have enjoyed useful, cooperative relations with other investigative and intelligence elements of the Salvadoran security forces. But we believe there is certain harshness in military discipline and discouragement of feedback from junior officers within the military establishment that can impair the effectiveness of an investigative unit. We suspect that the SIU and FU are not performing as efficiently as they might with a more flexible, less hierarchical management style.

Further, the officers, as well as staff of the SIU and FU need specialized training in investigation and forensic technology. Such investment is hard to justify for the officers as distinct from the staff, since the officers' primary career is in the military and they can be expected to leave the SIU and FU within a year or so.

Accordingly, for practical operational, as well as political credibility reasons, we strongly recommend that SIU and FU be "civilianized", that their executives as well as their staff should be civilians looking to a lifetime career in investigation and forensic science.

Our stay in El Salvador was not of sufficient duration to provide the basis for recommending the timing of such transition. Such judgement should reflect thorough consideration of the political factors within El Salvador. We do suggest, however, that transition be accomplished as rapidly as possible. Qualified civilians will not be willing to commit their careers to these units until they are convinced that it provides a worthwhile civilian career for them. And they will not be convinced of that until they see real evidence that the military are leaving the organization and will accept its existence as a civilian organization.

As to inducement for qualified military to transfer to a civilian agency, factors such as rank, prestige, pay, career development, retirement benefits must be addressed and be commensurate with the military.

A gradual transition may be necessary to sustain good working relations with the military and assure sustained support within the GOES generally. We must reemphasize, however, that the necessary quality and quantity of performance to establish a strong reputation for the SIU and FU can be gained only by experience and specialized training, which is not sensibly invested in transitory personnel.

H. Findings

1. Management - Subject to the reservation noted below concerning military involvement, the officers of the Special Investigation Unit appear to be well selected for interest, ability and integrity. They also seem to be performing well and without detectable partiality under difficult circumstances.

As to management style, coming from military officers it is essentially military. Response is prompt under strict discipline, but for maximum efficiency of such investigative units, the military management style is probably not optimum. The officers give the orders, and the detectives and other staff obey the orders. The detectives are neither permitted, nor do

they exercise, much initiative beyond doing what they are told. There is little of the upward feedback that is particularly desirable in an organization performing investigative functions.

2. Staff - The staff of the two units appears to have been well selected from available talent. However, while the people with more appropriate experience were available principally from the police, there still has to be considerable investment in training and experience to bring the organization up to high standards of performance.

3. Equipment - The organization is still suffering from shortage of transportation and communications equipment. While suppliers may have been at fault in some cases, certain procurement delays are attributed to AID slowness in managing project paper work. Also there have been some problems in synchronizing delivery of equipment with training of personnel, particularly in the laboratory. But this has not been a significant problem comparable to the delays in acquisition of adequate transport and communications equipment.

4. Facilities - The location of the Forensic Laboratory in the military compound impairs its usefulness. The limitations are both practical, in discouraging access of judges and other civilians involved in cases, and political in further indicating military domination of the SIU and FU investigative functions. Further, location of the laboratory at some distance from the other elements of the Special Investigation Unit, does not encourage or facilitate close working relationships between the investigators and the laboratory staffs. Additional space is needed as well.

5. Procedures - The establishment of well functioning procedures in new organizations must be expected to take time. Growing pains in this case may have been somewhat aggravated by carry over of military procedures in accordance with the experience of organizational leadership. There have been particular problems in making filing systems and record keeping as responsive as necessary for most efficient and effective investigation. With the help of technical advisors, good indexing and cross indexing procedures are being introduced.

6. Operations - The organization has done some good work but it is not showing yet in big cases involving senior military suspects. In fairness to these units in judging their performance, it has been difficult for them to show well on old cases for which the evidence has become stale. The kidnapping-for-profit case is often cited as evidence of willingness to pursue the military. However, the prosecution of senior military officers in that case may just evidence the drawing of some lines beyond which even the military can not go without being subject to prosecution- especially if the victims are among the rich and powerful.

The case load of the units is relatively low by U.S. standards. It is of course important that the units not be burdened with more cases than they can handle, such as to impair their ability to handle the most important cases. It is also important, however, that they learn how to perform under pressure in increasing their efficiency and effectiveness. Only by handling an abundance of "live" cases can they gain the necessary on-the-job experience.

The Forensic Unit is only now reaching its first stage of operational capacity and thus far has had as much as it can handle. As it builds up its capacity to handle a substantially increased workload, there will be need to educate the judicial system as well as the police on the use of forensic evidence as a supplement, or even replacement for witness statements.

I. Conclusions

1. Military staffing of the investigation units has had a negative effect in four ways:
 - a) As noted above, the military management style does not seem conducive to optimum efficiency and effectiveness of investigative functions;
 - b) Because the military personnel, and particularly the officers of the units, are not committed to careers in police work, and may be subject to transfer back to military duty at any time, it is difficult to justify substantial investment in the training necessary for optimal performance. The experience and expertise acquired is bound to be lost through transfer back to the military.
 - c) As long as the career of investigation leadership is within the military, success therein will depend upon relationships with other military officers, peers as well as superiors. There have been, and seem likely to continue, pressures tending to limit the most vigorous pursuit of investigation of military complicity in crimes, particularly to higher levels of the military. We do not believe that such situation can be expected to change substantially within the near future.
 - d) Regardless of whether the military affiliation actually constrains pursuit of investigations, the appearance of such potential is likely to undermine credibility of the units as investigators of military crimes.

2. A major impediment to bringing the investigation units under civilian direction is their dependence upon military personnel as auxiliaries of the court for presentation of evidence.
3. Operating under current criteria, the Commission appears responsive to current needs in selection of cases. We do not see need for further definition of the current purposely flexible criteria pending significant change in circumstances.
4. There is continuing need for specialized technical assistance. While much of this can be provided by short term advisers, we believe that, for the present at least, continuation of the resident technical advisor is worth the cost in supervising on the job application of training to specific cases.

J. Recommendations

1. The direction and staffing of the investigative units should be transferred to civilian police.

This could be accomplished through two steps. The objective would be to establish a career service right through the most senior officers within the police as distinct from the military. Without attempting to take on the whole police function at one time, it might be feasible to "civilianize" the Special Investigations Unit and the Forensic Unit as models for subsequent civilianization of all police functions. We have heard differing views as to whether the current language of the Constitution requires these sorts of police functions to be subject to the direction of the armed forces of El Salvador. In any event, completion of any and all legal and organizational changes necessary to provide for availability of at least one civilian-directed police agency for investigation of suspected military complicity in crimes, would be a significant step in enhancing credibility of Salvadoran administration of justice. This in turn could help strengthen the legitimacy of the GOES in the eyes of the citizenry.

2. The inter-ministerial commission concept for supervision of the Special Investigations Unit has proven useful and should be institutionalized, over the short term at least, pending establishment of the National Police under true civilian control.
3. Because of the role of the courts in supervising criminal investigation, the President of the Supreme Court should be added to the Investigations Commission.

4. The laws of El Salvador should be amended to establish the Special Investigation Unit as an auxiliary organ of the courts so that its staff may be eligible to present evidence without regard for affiliation with the military.
5. All participants in the administration of justice, and particularly judges and police, should be educated concerning the use of forensic evidence to supplement or substitute for witness testimony as evidence in resolution of criminal cases.
6. The Forensic Laboratory should be relocated in larger quarters outside of any military compound, as close as feasible to other investigative functions of the Special Investigations Unit.

III. JUDICIAL PROTECTION UNIT

A. Project Description

To protect the integrity of the El Salvador judicial system from intimidation and intrusions intended to thwart justice, the Judicial Reform Project Agreement established the objectives and provided funding for a Judicial Protection Unit (JPU). The JPU was to provide protection to participants in the judicial process in cases of critical social/political significance and sensitivity.

This evaluation assesses the progress of this project component at project mid-point and defines alternatives for required changes. We make recommendations on a) the need for such a unit, and b) the design of a JPU appropriate to the need.

B. Background

El Salvador, in the throes of a violent and protracted insurgency, has a judicial system that is severely limited in the application of Salvadoran law with independence, fairness and efficiency. Intimidation of judges, witnesses and other participants in major criminal cases is common. The failure of justice in past cases is often attributed to influence exerted by bribery, violence or threats of violence. The objective of this project is to help the GOES establish a security system that will protect judges, jurors, witnesses, prosecutors and defendants in critical, high profile cases. These would include crimes committed by people in positions of power and political extremists, and other serious crimes that generate local controversy and significant international interest.

Pursuant to the 1984 project agreement between the GOES and the USAID a Judicial Protection Unit was organized, trained and placed in operation in the summer of 1984 with U.S. technical assistance. That JPU as originally established consisted of a sixty man security force whose first assignment was to protect participants in the trial of five members of the Guardia Nacional (National Guard) accused of murdering four American nuns in 1980.

That unit is now dispersed; and the experience gained is difficult to reconstruct three years later in the short time of this evaluation. It appears, however, that the protection provided by the JPU at that time was purely a display of armed guards for the occasion, with little consideration given to long range planning for future contingencies. This effort did not accomplish much in instilling public confidence in the integrity or safety of the judicial system. The National Guard members tried as defendants were of lower, non-commissioned rank. Of

greater concern are cases in which ranking military officers or other prominent and powerful persons are implicated in the commission of serious crimes, and the judges, witnesses and other participants would be more vulnerable to intimidation.

The selection of JPU personnel at that time appears to have been motivated largely by the desire to employ non-military personnel. The original JPU contingent was selected from corrections personnel at Mariona prison. However, GOES officials as well as U.S. Embassy personnel noted that many of the prison guards recruited were inappropriate for their work. Some reportedly had criminal records or dishonorable military discharges. Those selected were subsequently trained at the Federal Law Enforcement Training Center (FLETC) at Glynco, Georgia by the U.S. Marshal Service. The training focused heavily on firearms training.

The planning and organization of the JPU was accomplished with great urgency and does not appear to have been directed at permanent needs, determination of strategy or definition of specific functions. GOES officials apparently considered this project a temporary USG effort, one observing that, "the effort to establish the Special Investigation Unit (SIU) and the Judicial Protection Unit seemed transitory."

The Supreme Court President assesses need for this project as a high priority. Among other possible threats, he recounted the story of a large demonstration wherein the Supreme Court was held under siege by a "Committee of Mothers" who apparently intended to explode a bomb at the Court. He sees no existing entity that can assure fast response to a security threat against participants of the judicial system. He has presently designed his own fifteen person JPU.

He emphasized that intimidation of judges, prosecutors, jurors and witnesses creates a serious breach in the judicial system. He believes that narcotics traffickers and kidnappers would likely attempt to intimidate key participants in the system. Some military officers may tend to protect each other. He also sees some prospect of intimidation by terrorists.

According to reports provided by the Vice Minister of Public Security, the levels of crime have become serious. Likely causes are high rate of unemployment, high cost of living and the societal trauma of the ongoing war. Assaults and homicides are considerably higher than in the past, driven by the spirit of violence engendered by the militant left and right extremist forces in the country. Although, homicides have decreased considerably this year, terrorist attacks have increased in number.

Among the high GOES officials, USAID and Embassy officers interviewed, there was full agreement on the need to provide

protection for vulnerable participants in specific cases. There is no consensus, however, on functions and organization of the JPU. There were various and strong criticisms of the structure and functions of the original JPU. And differences still remain concerning the type of organization that will best serve the needs of the judicial system.

The effectiveness and professional development of the JPU concept will depend on organization, definition of functions, selection and training of personnel and proper management. A military officer commanding a large paramilitary police organization believes that the organization of the JPU should be undertaken with the support of the National Police and National Guard. He emphasized that coordination by the JPU with other security forces is imperative. Several top GOES Officials suggested that the JPU be placed under their control. Many GOES officials spoke against military composition of the unit. Not one military officer visited by the Evaluation Team argued that the JPU should be under military control. The Supreme Court President suggested the JPU be placed under the Fiscal General (Attorney General) while the Attorney General suggested the JPU be combined with the Special Investigations Unit. The Minister of Justice suggested the JPU should be directly under his direction, and manned by prison guards. The Supreme Court President and the Vice Minister of Public Security, however, believe that the use of penitentiary guards is doomed to failure.

The most recent recommendation of the USAID and Embassy is establishment of a small group of highly qualified persons capable of conducting security assessments, identifying resource needs for a particular problem, and arranging for the assignment of security personnel through GOES sources or contractual arrangements with a private security firm.

Meanwhile, the Special Investigations Unit (SIU) formed under the Judicial Reform Project is already providing protection for five key witnesses in important cases presently under investigation. The National Police also is protecting an important witness in a major criminal case.

C. Conclusions

We believe the time is opportune for reform within the Salvadoran judicial system. There is notable willingness of the GOES officials, including the senior military officers visited, to support judicial as well as other democratic reforms. This willingness was combined with full awareness that such reforms might require substantial changes in Salvadoran law and attitudes to succeed. At the same time the USG, in assisting such reform, must be sensitive to substantial differences between the United States and El Salvador in culture and legal system, which have a significant bearing on the substance of reform.

The need for protection of participants in the El Salvador judicial system derives from the tenuous internal security situation, the history of intimidation affecting the processes of justice, the high crime rate and the need to bolster public confidence in the judicial system. The ability of certain individuals to commit crimes and escape with impunity because of the intimidation of witnesses, judges and prosecutors exacerbates the weaknesses already existing in the system. We believe that the Salvadoran judicial system must be able to protect participants against potential threats if it is to function effectively, independently and with fairness for all Salvadorans.

D. Recommendations

1. That planning and other measures necessary to implement the Judicial Protection Unit proceed as rapidly as possible.

Protection is necessary for the participants of the Salvadoran judicial system, particularly when the crime committed is serious and is linked to controversial political, social or human rights issues. The present atmosphere of violence is likely to continue indefinitely, and with it the accustomed use of intimidation against participants of the judicial process to influence the outcome of an investigation or trial is highly predictable. Also, there is dire need to improve public confidence in the judicial system. We believe that the establishment of a unit which can provide effective protection will help encourage witnesses, judges, prosecutors and jurors to participate in high profile, critical criminal cases. This change in attitude has been apparent when protection was provided to witnesses in previous cases.

We endorse the concept proposed by the most recent GOES/AID interagency working group for a small JPU capable of risk assessment and management of protection needed in special cases. The JPU would assess specific security needs and coordinate with the Security Forces (Policia Nacional, Guardia Nacional and Policia de Hacienda) or private contractors as needed and appropriate to obtain necessary security resources. Further, we recommend that with these functions, the unit also have some operational personnel to train and supervise nonorganizational personnel obtained for such service on a temporary basis. Such training and supervisory personnel would also constitute some highly limited organic capacity immediately available to provide personal protection for a key witness or other participant pending response from other sources in a case of most urgent, critical nature. The JPU would also determine and carry out arrangements for witness relocation if necessary.

The proposed JPU organization would consist of no more than fifteen to twenty headed by an officer equivalent in rank to the Deputy Chief of the Special Investigations Unit (see organization chart included with recommendation No. 4).

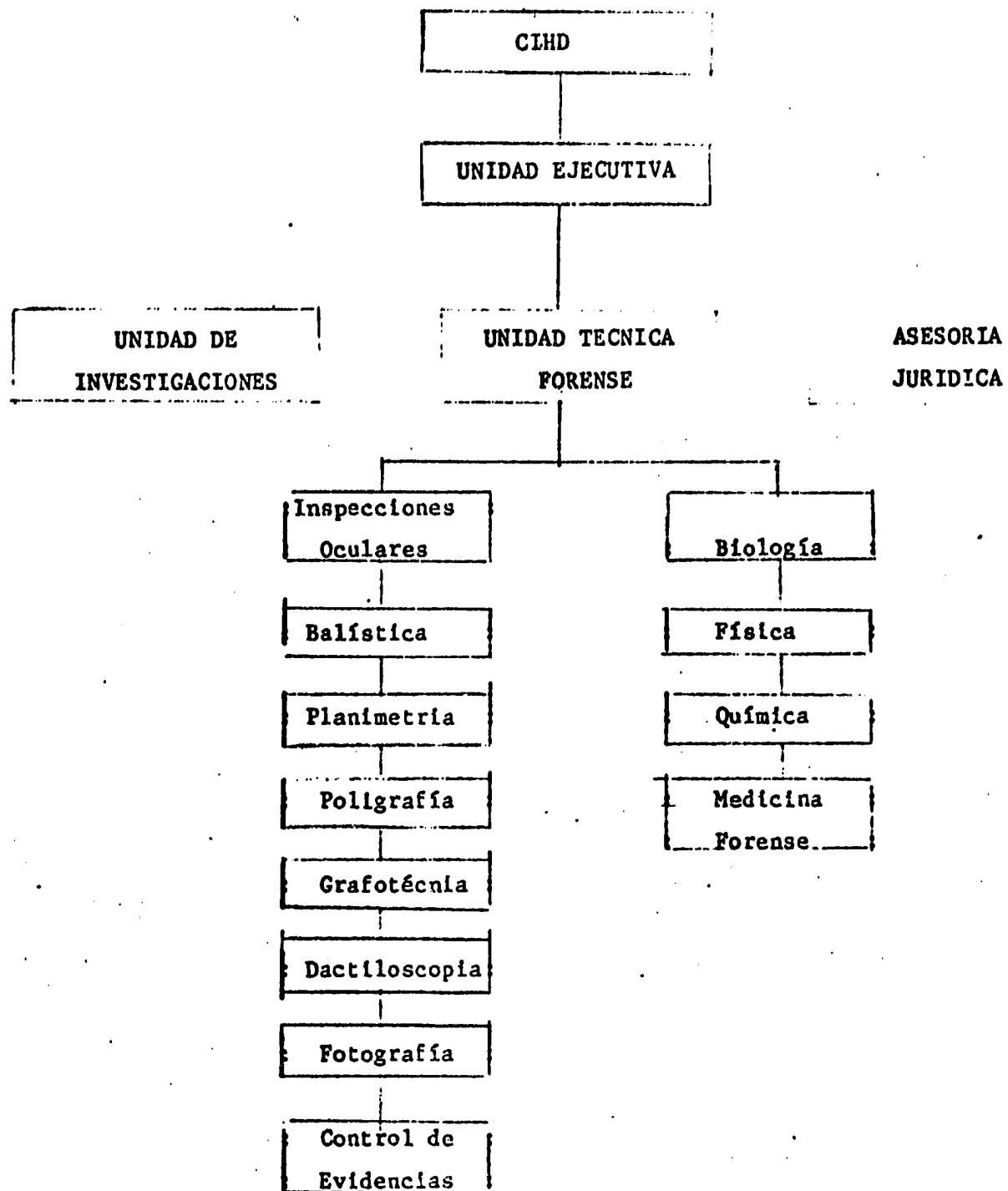
2. That the JPU be organized under the Investigations Commission.

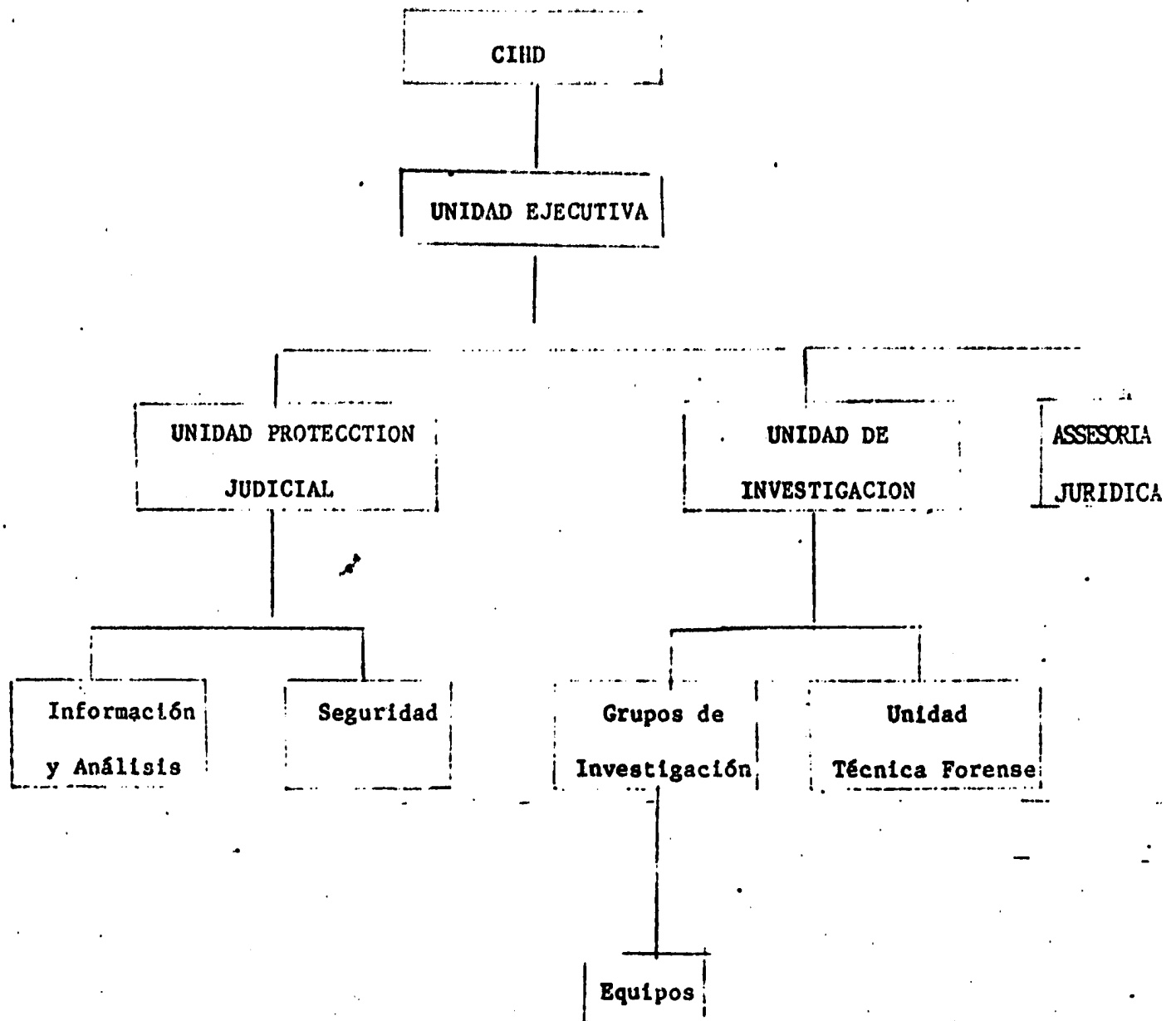
For the near term we propose that the JPU be organized under the Investigations Commission's Executive Unit because of the need for firm, effective management and direction on a professional level and for close coordination and cooperation with the SIU. We suggest that the director of the JPU be designated a field grade officer acting as a second deputy of the Executive Unit. By all indications, the Executive Unit has good leadership and reputation, and is on course with the SIU and FU as viable organizations. Strong working relationships already exist between the SIU command and the military officers in charge of the security forces. The coordination and cooperation required to obtain police personnel for judicial protection needs will be more effective. The security forces will provide most of the outside resources for physical security requirements.

Placing the JPU under another organization would risk increased military control or politicizing the function. There might be a tendency to use JPU resources for parochial priorities, and the management provided at a ministerial level might be insufficient due to heavy work loads and other distractions more likely to occur at higher levels. Under the proposed structure, the JPU would report through the Executive Unit to the inter-ministerial Investigations Commission chaired by the Minister of Justice. This would provide the essential characteristics, while building on an existing institution rather than having to start completely from scratch. Moreover, it would be an existing institution accustomed to working with USG/AID and experienced in satisfying USG/AID requirements.

The following organizational structure for the Investigations Commission and its operational units is recommended to incorporate the JPU. Our views on JPU organization over the longer term are set forth in Section VII.B.

A. Present Structure:



B. Proposed Structure:

November, 1987

Evaluation of the Judicial Reform Project,

No. 519-0296

USAID/EL SALVADOR

By

Arthur Mudge, Team Leader
Steve Flanders
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Final Report - March, 1988

PIO/T No. 519-0296-3-5037E

3. That studies be conducted to define the scope of authority for the Judicial Protection Unit, and determine specific functions and procedures for this organization

The creation of the JPU was theoretically approved by the GOES by Decree No. 66 dated October 25, 1985 and a plan of action for implementation was developed by the Ministry of Justice (MOJ) in March 1986. However, that plan called for the use of penitentiary guards to support the JPU activities and for the organization to report directly to the MOJ. Redesign is now appropriate.

In referring to the Judicial Protection Unit (JPU) Judicial Reform Project Implementation Letter No. 12, dated February 3, 1987, Revision to Annex I, Component II states that the "Revisory Commission will address, as appropriate, long term issues related to the organization and structure of the Judicial Protection Force within the judicial reform process."

The Revisory Commission should be capable of conducting necessary study and recommendations for changes in enabling legislation. Beyond that, however, with appropriate consultant assistance, the Investigations Commission and its Executive Unit should be able to conduct more specific study to determine the internal organization and functions of the JPU. The action plan already developed by the Minister of Justice should serve as a reference. Potential targets for security within the judicial system should be prioritized. Resources used to protect buildings housing the courts and offices of the President of the Supreme Court, Fiscal General, Minister of Justice and others should be reviewed to determine weaknesses and the changes needed. While physical security of buildings within the judicial system should be only a coordinative task for the JPU, building security should be included under any monitoring system established.

The study should address estimated requirements for JPU liaison with other security forces to obtain timely cooperation and access to additional personnel as needed. A system with established procedures that can assure necessary coordination between the JPU and the representatives of security forces should be defined.

The study team can further assist in the development of procedures for obtaining information needed for the analysis that must be conducted to assess a security need; for the deployment of personnel in special cases; and for the monitoring of operations. Any laws that might preclude civilian control should be referred to the Revisory Commission for study and recommendation of necessary changes to the Assembly.

Without intending to pre-empt the proposed study, we suggest that the general functions of the JPU should be assessing security needs for the judicial system, planning and monitoring activities related to security of the judicial system, negotiating with appropriate judicial officials on specific matters of security, managing coordination needed with the security forces and private contractors to obtain additional protective personnel as required, and supervising and training of such personnel. Except to meet an isolated urgent need pending access to other sources the JPU would not function as a guard force, but rather would arrange necessary protection within the framework of the Investigations Commission.

JPU personnel should be recruited on the basis of strict selection criteria. Minimum age should be twenty-one and candidates should have the equivalent of a high school education. Background investigation should be conducted by SIU personnel. A career structure with advancement potential, tenure, and professional standards should be developed.

JPU personnel should have the authority to carry firearms, make arrests and assist in the conviction of persons committing crimes. Training programs should be intensive, and include physical training, self defense programs, protection techniques, investigations, planning, firearms, and human relations. Training should inculcate professional conduct, discipline and esprit de corps.

Equipment for JPU personnel should include mobility and communications, weaponry, bullet proof vests, night vision devices, and other special equipment. The maintenance and repair facilities of the SIU should be available for the JPU, and reinforced if necessary with USAID assistance.

We recognize that since the top officers of the Executive Unit and SIU are career military officers, the JPU would be subject to some military influence and control at the outset. However, as the military officers of the Executive Unit are replaced in the future with professional civilian administrators, the JPU would come under civilian control.

IV. LEGISLATION REVISORY COMMISSION

A. Project Rationale

We found general consensus that for the majority of Salvadorans administration of justice is inadequate, because it lacks the essential characteristics of being impartial, honest and efficient; it does not act with necessary independence before power or pressure groups, institutional as well as private.

That situation results in favoritism, slowness in process, lack of qualification of the officials, and not just a few cases of corruption. This is the view not only from outside but also from the actors in the judicial system and those whom it is supposed to serve.

In addition, the Salvadorans recognize that an efficient judicial system which responds to the essential needs of the society, is an important means for securing peace. Increased efficiency can be accomplished only by application of the following:

- will or desire to change,
- human resources and,
- financial resources.

Clearly, in the El Salvador governmental as in the judicial environment, one can observe the will to promote change. The assistance that AID lends to the project is intended to help finance such change, furnishing the means for the improvement of the physical infrastructure, as well as the necessary human resources for implementing the proposed change.

B. Creation and Organization of the Revisory Commission

After execution of the project agreement in July 1984, the Legislative Assembly created the Revisory Commission for Salvadoran Legislation ("CORELESAL"), by decree dated June 13, 1985. CORELESAL succeeded a Revisory Commission for the Administration of Justice in Penal and Civil Matters created by Executive Agreement 145 of November 11, 1984.

CORELESAL began actually in September of 1985 after overcoming some political and institutional conflicts derived not from its nature and mission so much as the way its members were selected.

These members are:

- 2 Magistrates from the Supreme Court
- 1 Representative from the Attorney General
- 1 Representative from the Solicitor General
- 1 Representative from the Minister of Justice
- 1 Representative from the Minister of Defense and Public

Security

- 1 Representative from the Federation of Lawyer Associations
- 1 Representative from the Associations of Attorneys recognized by law
- 1 Representative from the President of the Republic, which representative serves as Executive Secretary of the Commission.

For its work the Commission adopted a system used by its predecessor commission:

The preliminary works, whether in form of diagnostic studies or proposed laws, are executed by teams of professionals from the appropriate area of specialization; the penal area, the civil area or the organic-administration area. The work of these teams is based on research by the Research and Investigation Section.

The finished work is sent to the Technical Committee, composed of the three area chiefs. The work is studied, shown to other professionals and then submitted for review by the Commission. The Commission has a "Coordination, Program and Evaluation Unit" that fulfills the functions indicated by its name. In addition the Commission has an administrative unit and a financial management unit.

Once the proposed legislation is approved by the full Commission in plenary session, it is sent directly to the Legislative Assembly.

One commendable Commission practice is to seek out the views of the people involved in a given problem area of administration of justice. The Commission employs two methods to identify the problems and the solutions. They convene forums, seminars and workshops with broad participation of affected sectors. Then, when the results reach the stage of proposed legislation, they are widely publicized. Among other means of publicity the Commission has begun to publish a bulletin called "CORELESAL INFORMA", reporting on the activities of the Commission, as well as other items of general interest for the lawyers and judges and their associations. The bulletin invites them to submit comments and criticism of the Commission's proposals.

Thus the Commission's work is broadly participative, facilitating contribution of ideas and criticism from the bar associations and more generally of others who are concerned with the issues.

C. Purposes of the Commission

1. General Purposes:

Following the philosophy set forth in Decree 39, the Commission has fixed as its goals: to make justice work in El Salvador by

improving the administrative, technical and legal capacity of the system within the constitutional framework of the Republic. The Commission considers that the search to improve the administration of justice contributes importantly to the goal of achieving peace. We note that the Commission has attached special importance to protection of human rights, to which much of the Penal Reform is directed.

In synthesis, as a general objective, CORELESAL proposes to achieve a system for administration of justice which is trustworthy and efficient.

2. Specific Purposes:

Within the framework of these general principles, the Commission has set as more immediate objectives the following:

- a. Carry out critical studies of the judicial system and the prevailing laws.
- b. Carry out diagnostic studies in different areas of the system.
- c. Draft legislation and regulations to implement the recommendations of such studies.
- d. Coordinate in part the activities of other elements of the system.

Toward these ends, and as an indispensable means to accomplish the proposed program, a schedule of priorities was developed within each area of work. This schedule has given highest priority, from the very beginning, to the penal area. In fact these priorities constitute sub-areas and were set by agreement with AID in Project Amendment No.2 of July 24, 1985.

Within the penal area the following sub-areas were established:

- a. Constitutional framework of the Penal Law
- b. Protection of human rights
- c. Revision of procedural law, with preference for procedural over substantive law
- d. Regulation of exceptional and urgent situations related to the current crisis of the country

Within the civil area the following schedule of priorities was proposed:

- a. Civil law aspects or the above criminal sub-areas
- b. Preference for social law, giving special importance to family law
- c. Constitutional provisions related to civil issues
- d. As with the penal area, preference for procedural over substantive law

The organic-administrative area was prioritized as follows:

- a. Issues related to the penal area
- b. Constitutional provisions concerning administrative organization
- c. Analysis of the justice system
- d. Analysis of the penal system
- e. Other subjects specified under Sub-component 2 of Amendment 2 of the Project Agreement. These include training of officials, strengthening of the lawyers' associations, improvement of the law schools, the national judiciary council, the judicial career law among other subjects.

D. Accomplishments of the Commission

The first and most important of the Commission's achievements is the attainment of respectability and credibility in all aspects of its work related to administration of justice.

Once its organizational difficulties had been overcome, the Commission was constituted of individuals of high qualifications and its working teams were formed from outstanding professionals. This opinion was expressed by many people interviewed. This is due in large part to the salary levels set by the Commission.

To accomplish the planned programs in the agreed order of priority, the Commission took up criminal matters principally, without rejecting others of special urgency, as follows:

- a. Approved by the Assembly:
The law of small farmers
- b. Under consideration by the Assembly:
The law of special procedures during rule of exception
- c. Projects in process:
The rights of the accused and defense counsel
Publicity during criminal proceedings
Body search and entry into residences
Spontaneity of confessions
Restriction of freedom
The jury system
Evidentiary proof
- d. Other important projects in preparation are:
Death penalty (solely for military crimes during war with another country)
Relief of sentences (amnesty, pardons and commutations)
Civil actions for damages from criminal acts.

There is also work under way in other fields such as studies of punishment, terrorism, legal assistance, public defenders and proof.

In the civil sector the work also has been intense. In addition to Decree 513 drafted by the Commission (about agrarian matters), also completed is a study about legal personal names, and another concerning adoption is under way to be integrated into a proposed family law code.

Other projects of interest in the civil sector include reforms in the laws pertaining to appeals; mercantile procedures; notarial exercise of arbitration functions, and judiciary and notary fees.

Both the civil and penal sub-commissions propose to integrate the incremental reforms into future revisions of the respective procedural codes and later the substantive codes.

The organic-administrative sector is operating on the basis of three assessments:

- a. Judiciary assessment, already completed with technical assistance from Florida International University and sponsored by ILANUD, AID and CORELESAL
- b. Assessment of the penitentiary and corrections system to be completed within six months
- c. Assessment of the system for administration of justice proposed for next year.

In coordination with other areas, the organic-administration sector has worked on constitutional issues in the law regulating administrative procedure for setting fines, habeas corpus, amparo, etc.

They are now conducting studies of the National Judicial Council; the academic training of law students; specialization and continuing education of lawyers in ethical, scientific and technical aspects of practice; revision of the administrative litigation jurisdiction and agrarian law.

E. Commentary

The function of the Revisory Commission, because of its technical-scientific nature, should be deliberate and thorough and it should be preceded by studies and analysis and it should be widely debated.

The results in terms of enacted laws depend on factors outside the Commission, such as the political management of the legislation in the Assembly and in the Government itself which is responsible for converting them into decrees. The Government is represented within the Commission by two Ministers and the

President of the Republic through the Executive Secretary. Therefore there is questionable validity in criticisms that the proposals are sent directly to the Assembly without adequate involvement of the Government. Whatever may be the political composition of the Commission, because of the basically technical nature of its work, its role should be to work out consensus among its own members on any proposal, leaving it to the Government to be primarily responsible for obtaining the appropriate enactment or decree.

Notwithstanding the problems noted above, the Commission's work has been in general accord with the Project Agreement; and, if the project period is extended as proposed, in the end El Salvador should have an adequate body of legislation.

There can be no doubt concerning the importance of the penal sector within Component I. Nevertheless an efficient civil judicial administration tends to resolve in its non-penal jurisdiction many social conflicts with crime producing potential. If relationships between individuals are properly attended by civil justice, tensions are relieved that might otherwise produce crime. It is important, nevertheless, that the Commission not be diverted toward secondary issues such as people's names or adoption procedures, at the expense of other more important issues at this time.

On the other hand, an efficient system of criminal justice does not depend exclusively from the legal codes nor from the judicial structure, but also from impartial, skilled and timely criminal investigations. It is essential that the needs of Components II and III of the Project (the Judicial Protection Unit and the Special Investigation Unit with its forensic laboratory) receive high priority in the Commission's work if the total project with all four components is to achieve its objectives.

We consider that the results of the Commission's work are positive and worthy of support and should achieve the planned objectives in the extended project period.

It is noteworthy that, in determining its priorities, the Commission has been concerned to give high priority to human rights. This is a factor of particular importance in determining the democratic orientation of the legal reforms, which obviously is a national purpose.

F. Recommendations

1. That the Commission initiate the organic revision of the Penal Procedural Code, including within one body the procedural aspects that have been studied to date, and contemplating within the Procedural Statute a Judicial Police force that would take over the functions of the SIU and JPU.

2. That the Commission revise its work agenda to give more emphasis to operational aspects (penal methods, criminal investigation, judicial police) and recognize the importance of attacking drug trade at an incipient stage which permits emphasis on preventive measures.
3. That the Commission take a more active role in carrying out the normative studies which will give legal definition to the SIU and the JPU.
4. That the Commission initiate planning for an Institute for Socio-Judicial and Legislative studies, so that when this project has ended such institute can continue on a permanent basis, without foreign support, carrying out needed studies for legislative proposals.
5. That USAID continue to support the establishment of a specialized library for the Commission.
6. That the GOES and USAID extend the project by two years (to December, 1990).

V. JUDICIAL ADMINISTRATION AND TRAINING

Support by USAID of judicial administration and training in El Salvador is a vital permanent contribution of the Judicial Reform Project. Only to the extent that permanent judicial institutions are strengthened in their routine discharge of investigative and adjudicative tasks, will the focal problem for this project be ameliorated or solved. That problem is a justifiable skepticism and failure of confidence in legal institutions that seem to be shared by Salvadoran citizens and foreign critics alike. Democratic institutions in El Salvador will remain shaky until the citizenry can and does resort to legal institutions in the routine fashion common to other democratic countries, and until the institutional power and independence of the judiciary is sufficient to repel attempted interventions by the powerful.

The ultimate goal of the Project in supporting judicial administration and training must be to support routine operations such that eventually the routine will overwhelm the extraordinary. A judiciary that is institutionally strong can treat any case as one requiring the ordinary application of available resources. The evaluation team has been impressed with the human and institutional base that now exists at all levels of the Salvadoran judiciary. In view of despairing criticism we had previously seen and heard, we were pleased to find an institutional base on which may be built a judiciary that will earn the confidence of its citizens.

The Judicial Reform Project to date has already accomplished major advances in support of the Salvador judiciary, including:

1. Placing before the Salvadoran judiciary an extensive and comprehensive agenda of suggested reforms in the Judiciary Assessment carried out during the summer of 1987 with the assistance of ILANUD and Florida International University;
2. Supporting several training programs, all subject to refinement as experience is gained, for several levels of judges and support staff;
3. Encouraging and supporting creation of a national administrative structure of the judiciary;
4. Encouraging and supporting mechanisms for data gathering and use; and
5. Supporting the programs described in the previous sections of this report, all of which hold the promise that they may yield permanent and institutional improvements as they solve the here-and-now problems they address.

The project team visited with selected judicial and administrative personnel at every level of the judiciary in El Salvador. Except for visits with the most senior policy-making officials, most of the visits were unannounced. The team visited

the Corte Suprema on three occasions and explored its facilities while meeting with numerous personnel, visited the Centro Judicial in San Salvador on two unannounced occasions, undertaking a complete tour of the facilities and making numerous contacts with judicial and administrative personnel at every level, visited the Centro Judicial in Santa Ana, and offices of the justices of the peace in two villages. While it was impractical to attempt to keep track of the name and title of every individual who participated in the resulting discussions, a broad estimate is that discussions were had with five Magistrados of the Corta Suprema, including its President and administrative chief, 8 Magistrados of the courts of the second instance, 10 judges of the first instance, 10 justices of the peace, the senior administrators at the Centro Judicial in San Salvador and in Santa Ana, and about a dozen secretaries and other support personnel. In addition, the team had the benefit of the much larger information base gathered by interviews during the 1987 Judiciary Assessment, including nearly half the judicial personnel of the entire system. Also a part of the information base for this evaluation were conversations with lawyers and other informed persons that supported all portions of this report.

We conclude that day-to-day operation of the Salvadoran court system appears to be in reasonably competent hands, in general. Notwithstanding the criticism received from many Salvadoran and foreign observers with whom we spoke, we believe at a minimum that the human materials are present on which to build a sound judicial system.

A dramatic illustration is the response of the system to the earthquake of October 1986. Although the several buildings of the Centro Judicial are still standing they are dangerous and uninhabitable. The courts have entirely vacated the condemned structures, and nearly all work is now done in adjacent parking lots and other vacant space, in extremely primitive emergency shelters.

Yet a visitor to the area would find an excellent system of signs that constitute a kind of summary of the judicial organization of El Salvador generally. Following the appropriate sign would lead a visitor to a judicial institution functioning normally despite considerable adversity. Since rebel activity in San Salvador produces frequent power failure, often there is insufficient light or temperature control under the tin roofs of emergency shelters. Conditions are crowded and hot, and furniture and equipment poor, yet we found no area in which ordinary functions had broken down.

The administrative staff at the Corta Suprema is small and not well developed as yet, but an important beginning has been made. Sufficient information is available for an adequate description

to be made of the resources and workload of the judiciary throughout the country, so an intelligible presentation can be made to the National Assembly and other bodies with regard to budget questions. Pursuant to recommendations of the 1987 Judiciary Assessment, data gathering has begun that promises adequate material to guide decisions concerning deployment and supervision of the judiciary. A modest investigative unit has been created to respond to complaints against judges and lawyers, and in every judicial body we visited, we saw a notice which has been adopted to inform citizens of the procedure for filing alleged misconduct complaints against the judiciary. Such tasks of a central administration as property control, audits, and data management and distribution are underway, a programmatic basis for improvement is in place, and we believe that the judicial branch evidences a commitment adequate to accomplish significant improvement in these areas, and to make effective use of USAID support.

Carrying the foregoing a step further, we believe that a programmatic base for judicial improvement now exists, in that the 1987 Judiciary Assessment has been read and used. Well-thumbed copies were in the hands of the relevant officials, and they volunteered views based upon it in the course of our discussions. The point, of course, is not that it should be adopted as a whole (indeed, we ourselves have doubts on some recommendations) but that the recommendations therein can serve as a useful agenda of potential programs for consideration by Salvadorans.

As detailed elsewhere in this report, a great deal remains to be done to strengthen the investigative capacity of, and on behalf of, the judiciary throughout El Salvador. Investigative forces must be qualified and must be directly controlled by the judiciary in a degree that appears now to be impossible in matters that command significant public interest. We believe, however, that improved operational control can result ultimately in greatly strengthened institutional independence, such that the judiciary and its investigative arms show promise to make efficient use of U.S. support in an effort to achieve independence of political intervention.

We suggest that future USAID expenditures in support of the Salvadoran judiciary focus on the following major problems. All of them, unfortunately, are problems that are difficult or impossible to deal with through distinct institutions. As noted elsewhere in this report, this is a project that differs very much from conventional aid efforts in that assistance is provided directly to central institutions of the national government. As a matter of aid administration, none of these is a simple problem.

1. Unlike most countries whose legal systems are based upon the Napoleonic code, El Salvador has not established an adequate judicial career. Relations between the judiciary and the law schools should be strengthened, so that initial training and direction toward a judicial career is offered to law students, as is common in such countries as Spain and France. Most important, the career itself must be made more attractive through raising pay, and especially through providing institutional support in the form of improved working conditions and training, and through gradual creation of a full time judiciary to replace the existing part time status.

To treat primarily the last point, creation of a full-time judiciary, has for some time been articulated as a goal of the United States Aid Mission, but we think it is one that should be undertaken gradually, with thoughtful care. The existing nominal judicial hours of 8 A.M. to 1 P.M. six days a week total 30 hours per week, which if honored would not be so far short of full time as to be offensive in themselves. In many of the smaller towns the workload is reasonably within the capacity of a part time judge. For the overwhelming workloads at some urban courts, hiring additional part time judges on a staggered schedule is a feasible alternative to increasing the hours of current judges.

Otherwise, of particular concern to most foreigners who experience the El Salvadoran judiciary, is the prospect of conflicts of interest resulting from activity in legal practice in the afternoon by part time judges. Even with part time judges, however, such conflict questions can be addressed by disqualification and use of an alternate judge on a case by case basis. Indeed, such is the practice in some rural areas of the United States where part time judges are still used in addressing relatively light caseloads.

While recognizing both the problems of conflict of interest and of workload capacity that result from part-time status, and agreeing that a full time judiciary is a desirable ultimate goal, we caution that achieving this goal must be undertaken in a gradual fashion that does not undermine what has been achieved at present. We believe that numerous incumbent judges, including perhaps a majority of the best ones, would resign if the system were suddenly made full time. The salary structure within the government of El Salvador could not readily be restructured in a fashion that would compensate judges adequately on a full-time basis. The system, in brief, can now attract lawyers of a higher quality than it could attract or retain if full-time salaries were paid.

While the use of part time judges presents some problems in conflict of interest and management of heavy caseloads, these are problems susceptible to alternative solutions. Use of part time

as opposed to full time judges is not necessarily a primary constraint on effective administration of justice.

2. Investigative activity is poorly integrated into the judiciary, and there is very poor coordination of investigations generally on such matters as responsibility for a crime scene. We believe that the Revisory Commission should draft legislation that would define, for all crimes in all locations, how responsibility is to be determined for preservation of evidence. The excessive reliance of the Salvadoran judiciary on confessions, with consequent incentive for coercion thereof, can only be reduced if the quality of evidence is much improved. Evidence quality can only be improved if the first authorities who arrive at a crime scene can control events there.

3. The national administrative structure needs to be strengthened, including especially a much strengthened capacity to investigate complaints against judges. Another essential component is development of a statistical system that can provide reliable information for use in assignment of judges and that can be used in their evaluation for appointment, reappointment, and promotion. USAID assistance can provide equipment and technical assistance in matters of statistics and other judicial information. Unobtrusive use of judicial statistics can be very important, and very effective. As the President of the Corte Suprema said to the evaluation team, his judges will work, but most will work even more and better when they know they are being watched.

4. We note also that communication between the judiciary and other relevant agencies is apparently often poor. We were reliably informed by persons who met with prisoners that a significant number of prisoners are actually the subject of a decree ordering release, yet prison authorities have not yet been so informed. Technical assistance and training are needed throughout the mechanisms for communication of information within the judiciary, and between the judiciary and other agencies.

5. A merit selection and evaluation program should be developed. As already noted, we believe that institution of a full-time judiciary should be a gradual process. This could be done by establishing new juzgados on a full-time basis, to which promotion would be by application to the Consejo Nacional de la Judicatura, on a prescribed merit selection evaluation. It is our belief that such a program, once in place and successful, might generate its own demand on the part of the judiciary. As the new full-time juzgados gain stature, they may be steadily expanded to the point that ultimately a full-time judiciary would be the norm rather than the exception.

6. Training of judicial and support staff has begun, but must be extended and made a regular part of the system. Following the

1987 Judiciary Assessment, we are skeptical that training in the United States or other foreign locations is cost effective, but it may be desirable on a modest scale. In particular, training at the site of foreign judiciaries might well be valuable for judges of new full-time jueces, as described above. Because of the differences between our respective judicial systems, however, we think that the United States component cannot be very large here. This is an area in which increased reliance on ILANUD would make sense, and in which other donor countries of the Civil Law tradition, such as Spain, Italy and France, could make a more valuable contribution.

7. Case management must be a specific focus of training and data management efforts. At present, the Salvadoran judiciary seems to take little responsibility for progress of litigation, despite many complaints from many responsible bodies.

8. Facilities and security must be improved. The Centro Judicial in Santa Ana, which has been spared earthquake damage, is an impressive and reasonably secure facility. Provision of sound physical facilities is important for many reasons, beyond the obvious operational and security ones. If the judiciary is to be strengthened institutionally and a judicial career made attractive, strengthening the symbolic role of the judiciary must be an important part. Since capital funds for expenditures of this kind are especially short in a country afflicted by both civil war and earthquake, this is an area in which USAID financing would be particularly useful. Reprogramming here may well be useful, as potential expenditures could be large.

VI. Project Management

A. Project Design

We find the design of the project remarkably sound considering the difficult circumstances under which it was put together. The design was based on prior studies, including the reports by Judge Tyler and the joint STATE/AID Assessment Team, and on prior activities including Department of Defense support for an investigation unit and the rapid formation of the Judicial Protection Unit for the trial of the Nuns' case.

The project design at the "Project Paper" stage was a rush job, responding to an urgent need to tap funds within the limited time in the fiscal year following enactment of special authorizing legislation. Prepared by Mission staff with the help of outside consultants, the project paper impresses us as well drafted and conceived, especially considering the circumstances. Certain critical institutional issues concerning location of functions within various agencies were not resolved, and some of them are still open. It is not clear that these issues could have been definitively resolved at the project design stage, even with substantially more time for consideration.

We are impressed that the Revisory Commission concept is working reasonably well. The organization of the special investigative units under a ministerial level commission, including a representative of the President as well as certain most directly concerned ministries, likewise appears sound at this stage of project development. The court administration component has been somewhat delayed pending completion of necessary preliminary studies by the Revisory Commission. Certain training and urgent procurement has already been accomplished, however, and the foundation appears well laid for the main phase of project implementation within the near future.

The one real design "dud" was the Judicial Protection Unit, representing a rushed effort to adapt a relatively foreign concept with insufficient Salvadoran input. Indeed, the establishment of the guard force for the trial of the Nuns' case was viewed by the Salvadorans as primarily a U.S. Government operation. Salvadoran participation was limited to provision of the guards, and hardly elite guards at that. While judicial protection is a new concept to El Salvador, the Salvadorans with whom we discussed it view it as needed. They consider that it is the manner of organization and execution, rather than the concept itself, that is in question.

Potentially supportive project components which might have been included in a comprehensive judicial reform effort include assistance to legal education reform and strengthening private

lawyer organizations. Those are discussed elsewhere in this report as likely subjects for project expansion.

An element somewhat skimmed in the Project Paper and design was the procurement plan detailing the nature and likely sources of services and commodities needed for the project. Ordinarily such plan would include in the project authorization any waivers of source or bidding procedures considered necessary for project procurement. Detail was understandably difficult to determine during a rushed design phase. But such lack within the design and authorization stage could have been remedied by prompt follow up during the preliminary implementation stage. This was not done, and some procurement of needed equipment has been significantly delayed.

B. Project Implementation

The project is substantially behind schedule, and the period for implementation already needs to be extended by two years in order to project a realistic schedule for completion. Nevertheless, considering the difficult working conditions in a war time environment, the need for new institutions to be established and enabling legislation enacted with key implementing agencies dominated by opposing political parties, we consider implementation of the project to be generally good.

We are impressed that despite some problematical interparty bickering, Salvadoran commitment to project implementation has been generally strong. The Salvadoran participants have performed well in dealing with new concepts and new organizations in the midst of a raging civil war.

On the AID side of the implementation equation we find evidence of much good work. We do, however, find significant evidence of avoidable confusion and delays in payment as well as procurement. Indeed, the evaluation team members have first hand experience with such confusion and delay.

We are impressed with the dedication of the assigned Project Officer to the project and have no reason to discount the frequent comment that he deserves full credit on the AID side for the substantial progress already achieved. In determining priorities while under severe overload, he has wisely given highest priority to helping resolve implementation problems on the Salvadoran side. He has been particularly successful in establishing strong working relationships with senior Salvadoran officials. Considering that his education and experience were in economics rather than law, public security or closely related fields, this is a remarkable accomplishment.

The Project Manager does not enjoy good relations with SETEFE, the bureau within the Ministry of Planning responsible for day to

day, month to month financial administration of foreign assistance funds. In that office, we detected particular resentment against the AID representative for the Judicial Reform Project. He is known for presentation of requests at the last minute and going over bureaucratic heads to the Ministers in seeking action. Judging from delays in more routine flow of funds to the Judicial Reform project, particularly the Court Administration component, the bureaucrats of SETEFE may be "getting back" at those whom they feel do not try to comply with their system. Or alternatively, such delays may just reflect poor SETEFE performance without intent to discriminate. Also, however, within the AID Mission we heard resentment of last minute submission of procurement requests, some of which were acted upon outside routine procedures, but some of which could not be.

The principal factors delaying procurement have been delays in approval of action plans and in obtaining necessary waivers for various types of non-routine procurement. The Project Manager had no previous experience as a project manager. Because he had served in the Project Office prior to his assignment as Project Manager, initially it was not considered necessary to assign a Project Officer to help the Project Manager move the paper work on the project. Such rationale for this decision, however, overlooked the lack of any extended period of strong performance in the Project Office.

Because the Project Manager is operating in areas of particular interest to the Ambassador and Political section of the Embassy, his time available for work on routine project implementation has been substantially reduced by calls upon his services from the Embassy.

The Project Manager might have been strengthened in his mastery of this difficult situation had he received stronger supervision requiring timely performance in those areas where the Project Manager was capable, and providing support, either from other Mission officers or from the supervisor himself, in those areas where the Project Manager was less skilled. It appears that there was inadequate communication between the Project Manager and the supervisor, such that the supervisor was not fully aware of problem areas in which the Project Manager needed more support or guidance. Where the fault lies for such lack of communication, we are not in a position to determine. In any event there is shared responsibility to see that communication, both upward and downward, are adequate for effective implementation of the project.

Among the more unfortunate consequences of such weakness of supervision and communication is that the Project Manager is making major decisions on a highly sensitive project without

adequate review. We found no one in either the Embassy or the AID Mission who has the knowledge of the facts and people involved to be in a position reasonably to check or challenge the Project Manager's recommendations and rationale therefor, even on major issues.

In considering the causes of such weakness of communication and coordination, we are inclined to believe the Project Manager could have performed substantially better had he not been so severely overloaded. He was managing an unusually ambitious and complex, as well as important, project under difficult circumstances. While he is often characterized by AID and Embassy colleagues as "playing close to the vest", in fairness there was not much time for him to open up with his colleagues in AID and the Embassy. His natural tendency was to assign highest priority to working with the Salvadorans to overcome the many Salvadoran obstacles to project progress, something which only he could do, and rely heavily upon his USAID and Embassy colleagues to help in those areas where they could. This was not a wrong strategy for addressing the problem. But it depended not only on ability and willingness of colleagues to respond, but also on an essential basic level of communication with supervisor and colleagues to keep them aware of the needs and the manner in which they could help.

We note in the Mission's favor that substantial remedial action has already been taken. The Office of Democratic Initiatives now has a chief with an excellent reputation as a can-do person, who has already become seriously engaged in the work of his office, and this project in particular. He appears to be providing stronger and clearer guidance. The Office of Democratic Initiatives is also acquiring a new deputy chief, previously a legal advisor. This should provide the benefit of good legal background in helping to deal with the legal aspects of the project, particularly the court administration and revisory commission components. It will also help relieve a portion of the excessive workload the Project Manager has been bearing.

To assist the Project Manager in dealing with the more bureaucratic requirements of moving procurement and other project related paper work, the Mission has assigned a member of the Project Office to this project among others. To respond to the general need for clear guidance to project managers as to what is expected in project action plans, procurement actions and other project paperwork requirements, the Project Office has prepared a Mission Order more clearly defining what is to be done and by whom.

C. Project Coordination

1. State and AID

Because of its extraordinary size and scope relative to the size of the country, the AID program generally in El Salvador is of more than routine interest to the State Department, the Embassy and the Ambassador. Further, the Judicial Reform Project is of special interest for the State Department and Embassy because of its importance in helping the GOES improve its image in the United States as well as El Salvador for respect of human rights in particular and democratic institutions in general. The judicial and police systems are areas of special political sensitivity for any AID assistance program. In El Salvador's fledgeling democracy, reform in these areas is particularly sensitive relative to the delicate balance between civilian and military power. El Salvador has a long history of military intervention in government, further aggravated by civil war. Of the crimes most significantly affecting GOES image, crimes involving alleged military participation figure prominently.

Indicative of State and Embassy's keen interest in the Judicial Reform Project is the Ambassadors's insistence that the Office of Democratic Initiatives remain in the Embassy. It is the only office remaining in the Embassy after the 1986 earthquake forced removal of the remainder of the AID Mission to other quarters. The Deputy Chief of Mission heads the Law and Order Task Force on whose agenda progress of the Judicial Reform Project has high priority.

In view of the legitimately keen interest of the Embassy in the Judicial Reform Project, it is especially important that there be good channels of communication between the Embassy and the implementing agency at all levels, and particularly at the staff level. In this area again we find symptoms of poor communication between the Office of Democratic Initiatives and its Embassy counterparts. Indeed the assigned Embassy Political Officer requested to be reassigned from the project because of her sense of inadequate communication. The Project Manager is responsible to see that such communication occurs, but it is also the responsibility of the Project Manager's supervisor to oversee performance and assure compliance with good practice.

At the outset of the evaluation we were informed that AID and State are working on revision of delegation of authority affecting implementation responsibility for assistance to police. Such revision would continue AID responsibility for implementation of the court administration and revisory commission components of the Judicial Reform Project, but would eventually remove from AID and reserve to State Department,

authority for implementation of assistance to police investigation and protection functions. It is not contemplated that State would implement these projects directly. Rather, State would deal with the Department of Justice in overseeing such police assistance. We understand that AID seeks thereby to remove itself from responsibility in areas which have caused public relations problems for the Agency in the past and where AID has long since shed the institutional expertise necessary to properly monitor and supervise such activities.

We note the potential problems in such separation of responsibility. Police functions may be more neatly separated from judicial functions in the system of justice which the United States inherited from Great Britain. Under the civil law system of El Salvador there is a much closer relationship between the judge, who is in charge of investigation, and the police who carry out the investigation. Because of this close functional linkage in criminal cases, State and AID would have to make a special effort to see that their work on these two areas is clearly defined and closely coordinated with a premium on excellent communications between responsible State and AID officers.

Assuming that the proposed change in delegation of authority is approved, with an Embassy project manager eventually taking over on assistance for police investigation and protection, a more structured system of project monitoring and coordination would be in order. We would recommend periodic project review on a monthly basis, logically within the purview of the Law and Order Committee, chaired by the Deputy Chief of Mission. In addition to the project managers, from both Embassy and AID, AID should be represented by the Chief of the Office of Democratic Initiatives ("ODI"), and at some sessions, depending on the importance of anticipated issues, by the USAID Associate Director as well. Less often, but still on a regular basis, perhaps as often as every three to four months at the outset, the project review should include the Ambassador and AID Director.

2. Coordination within AID

As touched upon above, we find evidence that communications within the Mission concerning the Project need to be improved. We believe that procurement problems might have been better anticipated and more promptly dealt with if there had been more frequent and open communication on these concerns between the Office of Democratic Initiatives and other Mission offices. The assignment of a Project Officer to the Judicial Reform Project should help facilitate coordination among the Mission offices, but we suggest that the Project Manager make a stronger effort to keep AID colleagues informed as needed in order to better anticipate and avoid problems in the future.

3. Coordination with the GOES

We have already noted the excellence in general of project coordination with the GOES at the project manager level. Seemingly lacking, however, has been periodic review between GOES representatives and AID at the senior level.

During the team's stay in El Salvador, there was a meeting on various project issues involving President Duarte, the Ambassador and the AID Director. While the interest and involvement of the President is impressive, we suggest that the project might benefit from regular annual joint GOES/USG reviews at the level of the AID Director, DCM and the senior GOES representatives, including the Minister of Justice and the President of the Supreme Court. Although not required by the Project Agreement, such joint annual reviews at that level should help to put some teeth into annual implementation or action plans, as well as provide a forum for airing and resolution of pending issues.

Further relative to coordination of project implementation with the GOES, we note that the Supreme Court President, with primary responsibility for implementation of the Judicial Administration and Training component, is not a designated representative of the GOES for project implementation. We understand that this lack has at times hindered implementation of that component, and we suggest that the omission be corrected promptly.

VII. SPECIAL ISSUES

A. Performance Perspective - Need for the Long View

This project presents notable potential for conflict between short term interests in resolution of specific criminal cases and long term interests in establishment of new institutions and reform of existing systems for improved administration of justice in El Salvador. As noted above, many in El Salvador and elsewhere, particularly American human rights activists and legislators responsive to such constituencies, have been deeply concerned for flagrant human rights violations by the Salvadoran military. They are dismayed by the seeming inability of GOES systems and institutions to administer justice in dealing with such crimes, particularly those involving the Salvadoran military. This weakness in administration of justice has severely impaired GOES credibility in the United States as well as El Salvador, thereby jeopardizing U.S. assistance needed for support, even survival, of the Government of El Salvador.

Fortunately, however, there has been substantial Executive Branch and Congressional support for projects directed at (1) improvement of administration of justice generally in Central America, and (2) particularly, the conviction of Salvadoran military officers implicated in flagrant human rights violations.

Unfortunately, this project has been plagued by corresponding expectations for quick resolution of specific crimes as the measure of performance of a project largely directed at long range development. While roads can be designed and built relatively quickly, reform in fundamental political institutions takes time. Particularly is this so within a democracy where vested interests in particular social arrangements are entitled to be represented. New constituencies must be built in support of reform. Among the more conservative elements of a society, there will be a heavier burden of persuasion for justifying change.

For example, pushing the Revisory Commission too hard to develop specific legislation in which the USG has a particular interest may breed resentment and corresponding resistance or disinterest on the part of its members. To gain their commitment to this worthy new institution we must respect their interest in legislation on such diverse subjects as name change and adoption as well as criminal procedure. Similarly with the investigative units, overconcentration on cases of particular interest to the United States could produce excessive identification with the USG and impair SIU credibility as a Salvadoran institution.

Further, in El Salvador we see a particular need for education of the participants in the system to bring about improvements in the

system. For example, the forensic laboratory can have the latest in equipment and technology, with a high level of effectiveness, but that will not be enough if those who need the services do not use them. Judges and police must be educated to the evidentiary capabilities of forensic science; and this, like most educational processes, is one that requires time.

Judges must be vested with professional self respect. It is not enough that judges be better paid and trained. A professional self image is a major defense of the judicial system against corruption, whether by bribery or by intimidation. Merit selection of judges and adequate court rooms and support staff, in addition to higher levels of compensation, all will help. But time will be required for cumulative evolutionary impact to register in specific cases.

In a democracy, particularly a democracy under stress such as that in El Salvador, appearance -- the perception of the administration of justice -- can be as important as fact in establishing and sustaining the credibility of the institutions. Respect and worthiness of respect are symbiotic, the one building on the other, and here again the changing perception of the public is evolutionary and does not occur overnight.

B. "Civilianization" - Why, How and When

It is easy enough for an evaluation team to glibly assert the need for "civilianization" of the special investigative units, and then fly away. The hard part is to implement such reform affecting long established institutions. We owe the implementers some further thought on methodology and relative priority, as well as rationale.

- In considering the future of the special investigative units we should not lose track of the purposes for which they were established. There are at least two principal reasons. First was
- concern that police units under the control of the military would not perform their investigative functions as zealously as necessary in cases of suspected military complicity. This factor was of special concern when some of the military were suspected of participation in death squad activity. The second reason was that, regardless of military complicity, there appeared to be real weaknesses in the capability of the Salvadoran police to handle the investigative and forensic requirements of difficult and important cases.

It was not necessary to establish a separate investigative unit to address the weaknesses in expertise and technique. That aspect could just as well have been addressed by training people within the Salvadoran police. The separate unit was established at U.S. insistence actually, in order to avoid raising questions

under U.S. statutes restricting assistance to military and police units. Further, such independence, might help insulate investigations from military pressure in cases where the military was suspected of acts of complicity.

Ironically, as we consider "civilianization" of the Salvadoran police and the need for gradual transition, we can anticipate that the need for insulation of the special investigative units from military control should abate substantially. Already the attitudes of the military leadership have changed notably. In our discussions with Salvadoran military we sensed general realization that harsh repression and abuse of human rights have not proven successful in dealing with civil insurrection. Indeed their experience indicates that such tactics only aggravate such insurrections. Accordingly the military and the police have moderated their tactics. Over the longer term there is no reason to believe that the military in El Salvador will be any more or less corrupt and abusive of power than would be civilian politicians.

Self policing by the military would certainly help the situation. Increased specialization and professionalism within the armed forces, influenced we might hope by U.S. military assistance, should heighten military concern for institutional respectability. Institutional self-discipline of criminal conduct by the military, along the lines of the U.S. armed forces and their Criminal Investigation Division, would help relieve one major concern over military control of the police.

Over the long term the rationale for separation of the police function from the military function depends also on practical factors. No longer are police and military functions so simple that military officers, as the traditional "jacks-of-all-trades", can be expected to move back and forth between the two services, exercising necessary leadership without specialized expertise. Rather, as both the military and the police disciplines acquire a higher level of sophistication, there is need for increased specialization both in technology and in management systems. We have pointed out above how military management systems don't necessarily provide optimum supervision for criminal investigation. Similarly the introduction of forensic equipment and technology adds a new level of sophistication dealing with material evidence. The introduction of combined land and air counter-insurgency tactics is only one example of the military becoming more complex in ways that would place at significant disadvantage a military officer who spent a substantial part of his career in police work.

The rationale for an elite special investigative unit to handle especially difficult or politically sensitive cases may well continue. Certainly in the United States we recognize the need for special prosecutors and investigators in cases close to

Executive Branch agencies responsible for law enforcement. Similarly, in El Salvador there may be continuing need indefinitely to have a special investigative unit like the U.S. Federal Bureau of Investigation, of such prestige and institutional strength that it will be relatively resistant to corrupting influence. El Salvador might do well to follow the examples of Venezuela, Colombia and Costa Rica in attaching such a unit to the judicial branch.

The rationale for independence does not apply with equal force to the forensic laboratory. The nature of the laboratory's work in responding to highly specific requests is not as susceptible to subtle restraint or diversion. There is far more play for individual discretion in leading an investigation than in making ballistic comparisons. Provided the services of the forensic laboratory were fully and freely available to the special investigative unit, the logical longer term home for the forensic laboratory might well be within the national police if that body were assigned primary responsibility for criminal investigation. If, however, the GOES were to follow the examples of Costa Rica, Venezuela and Colombia in assigning all criminal investigation to a separate judicial police, logically the forensic laboratory should be attached to that organization.

The Judicial Protection Unit should logically be with the judicial branch since its primary purpose is to protect witnesses and judges involved in specific cases pending before the judicial branch.

In conclusion then, these three units with their rather different and discrete functions, which we have recommended stay under the Commission's institutional umbrella over the short term, might be well destined for separate organizational homes over the longer term. And the practical arguments for separating police from military should appeal to more enlightened military as well as police as both functions become more specialized.

APPENDIX A: METHODOLOGY

The evaluation was carried out during the period October 24 through November 24, 1987 by a team of five. The team included a Colombian lawyer expert in civil law; an expert in court administration from the U.S. federal court system; a police investigation expert; a police generalist with substantial expertise in personal and premises security and also substantial experience in Central and South America with AID Public Safety programs; and as team leader, a development generalist, experienced as a lawyer in both private and public practice and also experienced as an AID executive.

The team conducted interviews with Salvadorans and Americans involved in the project, and others with substantial knowledge of the project. The team started with briefings and interviews with State Department, Justice Department and AID officials in Washington, D.C. The team then moved to El Salvador for three more weeks of interviews with Salvadorans, both government and private, military as well as civilian, and with officers of the AID Mission and U.S. Embassy. Among Salvadorans interviewed were judges and court administrators from the Supreme Court down to the local magistrate level, military and police officers of all ranks, private lawyers and interested Salvadoran citizens. Two members of the team traveled to Guatemala to meet with U.S. Ambassador James Michel who had taken an active role in the project, both as Deputy Legal Advisor to the State Department and as Deputy Assistant Secretary of State. A partial list of people interviewed is attached hereto as Appendix B.

The evaluation was reviewed in preliminary draft by AID and Embassy officials prior to departure of the team from El Salvador. A final draft responding to comments from that first review was sent to the Mission for further review and approval. This final version of the evaluation responds to observations from that second review.

APPENDIX B: PARTIAL LIST OF PERSONS INTERVIEWED

U.S. House of Representatives

Congressman Esteban E. Torres
Terry Peel, House Appropriations Comm. staff
Bill Schuersch, House Appropriations Comm. staff

U.S. DEPARTMENT OF STATE

Ambasador Edwin Corr
Ambassador James Michel
David B. Dlouhy
Kenneth Van de Velde
Faye Armstrong
Charles Shapiro
Janice Elmore
Peter Schmeelk
Don Gatto
Jim Callahan
Thomas Carothers

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Malcolm Butler
Henry Bassford
Bastiaan Schouten
John Heard
William Kaschak
David Kitson
Martin Dagata
Priscilla Del Bosque
Roma Knee
Thomas Geiger
Deborah Kennedy
Roberto Figueredo
Norma Jean Parker
Bernie de Basagoitia
Frank Latham
Richard Nelson
Gary Herbertson
Gail Lecce
Robin Gomez
Ronald Witherell
Richard Wheldon
Hildred Duenas

JUSTICE DEPARTMENT

Deborah Maxwell
David Kriskovich

U.S. MILITARY GROUP

Maj. Al Gomez

AIFLD

Gordon Ellison

SALVADORAN LEGISLATION REVISORY COMMISSION

Dr. Jose Ernesto Criollo
Dr. Jose Albino Tinetti

SUPREME COURT

Dr. Francisco Jose Guerrero
Dr. Homero Sanchez Cerna
Dr. Ricardo Alfonso Garay
Lic. Franklin Rosales Molina

MINISTRY OF INTERIOR

Lic. Carmen Amalia Pantoja de Morales

INVESTIGATIONS COMMISSION (INCLUDING SIU AND FU)

Ing. Jose Ricardo Perdomo
Cnel. Nelson Ivan Lopez y Lopez
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OTHERS

William P. Lord, Lawyers Committee on Human Rights
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Margaret Popkin, Catholic University
Jimera Rone, Americas Watch
Felice Lindo, International Red Cross
Ricardo Castaneda, private lawyer

APPENDIX C: PARTIAL LIST OF SOURCE DOCUMENTS

Judicial Reform Project No. 519-0296

Project Agreement dated July 12, 1984

Amendment No. 1 dated May 14, 1985

Amendment No. 2 dated July 24, 1985

Project Description and Revised Implementation
Document dated March, 1986

Project Paper dated September 3, 1984

Informe de la Fuerza Armada de El Salvador sobre el respeto y la vigencia de las normas del derecho internacional durante el periodo de Septiembre de 1986 y Agosto de 1987.

Informe de la Fuerza Armada de El Salvador sobre los derechos humanos durante el periodo de Septiembre de 1985 y Agosto de 1986.

Informacion estadistica sobre violaciones de derechos humanos cometidas por el FMLN-FDR. durante el periodo Septiembre de 1986 y Agosto de 1987.

La situacion de los derechos humanos y las libertades fundamentales en El Salvador, dated October 2, 1987.

Cartilla basica de los derechos y libertades fundamentales del hombre para su proteccion y garantia por la seguridad publica de El Salvador.

Graficas comparativas de anos anteriores con 1987.

Miembros de la Fuerza Armada que han sido consignados a distintos tribunales de la republica durante el periodo del 15 de Octubre de 1979 al 31 de Agosto de 1987.

Procedimiento operativo normal para las detenciones afectuadas por elementos de la Fuerza Armada.

La seguridad publica en la guerra por la democracia.

Exposicion de motivos para la reorganizacion del Vice Ministerio de Seguridad Publica de sus unidades operativas y administrativas y organigramas respectivos

Manual de la Unidad Tecnica Forense.

Quarterly project review reports of USAID/El Salvador from September 30, 1985 through the present.